

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC for a )  
Certificate of Public Good, pursuant to 30 V.S.A. )  
§ 248, authorizing the construction and operation of a )  
5-turbine, 12 MW wind generation facility, with associated )  
electric and interconnection facilities, on Georgia Mountain )  
in the Towns of Milton and Georgia, Vermont, to be known )  
as the "Georgia Mountain Community Wind Project" )

Order entered: 12/9/2011

**ORDER RE: DECOMMISSIONING PLAN**

**I. INTRODUCTION**

On June 11, 2010, the Public Service Board ("Board") granted a Certificate of Public Good ("CPG"), pursuant to 30 V.S.A. § 248, to Georgia Mountain Community Wind, LLC ("GMCW"), authorizing the installation and operation of a 5-turbine, 12 MW wind generation facility, with associated electric and interconnection facilities, on Georgia Mountain in the Towns of Milton and Georgia, Vermont, to be known as the Georgia Mountain Community Wind Project (the "Project").

The CPG included the following requirement as Condition 12:

GMCW shall file a Decommissioning Plan (the "Plan") for Board approval. The Plan shall include a detailed estimate of the projected decommissioning costs along with certification that the cost estimate was prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. The Plan may allow GMCW to contribute to the Decommissioning Fund (the "Fund") as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the Fund may not net out the projected salvage value of the infrastructure. The Plan shall include a copy of the Letter of Credit to be posted by GMCW to secure the full amount of the Fund, and demonstrate that the Fund will be managed independently and be creditor- and bankruptcy-remote in the event of GMCW's insolvency or business failure. The Letter of Credit shall be issued by an A-rated financial institution, shall name the Board as the designated beneficiary, and shall be an "irrevocable standby" letter that includes an auto-extension provision (i.e.,

"evergreen clause"). Parties will have three weeks, from the date this Plan is filed with the Board, to comment on the Plan. GMCW cannot commence construction until the Plan is approved.

On October 4, 2011, as required by Condition 12, GMCW filed its proposed Plan for review by the parties and approval by the Board. On November 4, 2011, GMCW filed a revised decommissioning plan ("Revised Plan"). In this Order we deny, without prejudice, GMCW's plan to establish a Fund based on the cost estimates submitted with its October and November filings and utilizing a drawing certificate such as the sample submitted with its November filing. In all other respects, we approve GMCW's Revised Plan, with the modifications required below.

## **II. PARTIES' FILINGS**

On October 4, 2011, as required by Condition 12, GMCW filed its proposed Plan for review by the parties and approval by the Board. Under GMCW's proposed Plan, decommissioning would consist, at a minimum, of the following:

- a. all turbines, including the blades, nacelles and towers, will be disassembled and transported off-site for reclamation and sale;
- b. all of the transformers and other electrical hardware will also be transported off-site for reuse or reclamation;
- c. the overhead power collection conductors and the power poles will be removed from the site;
- d. all underground infrastructure at depths less than two feet below grade will be removed from the site; all underground infrastructure at depths greater than two feet below finished grade will be abandoned in place; and
- e. components that are located within or under the access road or construction pads shall be removed and the excavation that remains after removal of these underground components shall be filled in as set forth herein. Roads and pads will stay in place.<sup>1</sup>

On October 21, 2011, the Vermont Agency of Natural Resources ("ANR") filed comments regarding the sufficiency of the Plan. ANR contends that the road surface, turbine pads, side-slopes, and stormwater features must be "broken up" and re-contoured to match pre-construction contours and soil depths. ANR further recommends that the decommissioning plan

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1. Letter of October 4, 2011, from Kimberly Hayden, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A.

include plantings of native tree species, with a requirement that monitoring and remedial action be implemented to ensure sufficient survival of the plantings. ANR attaches to its comments a copy of the decommissioning plan that the Board approved for a different wind generation facility in Docket 7628.<sup>2</sup>

On October 27, 2011, the Board issued a memorandum requesting that GMCW file additional information regarding the proposed Plan.

On November 4, 2011, GMCW filed a response to ANR's October 21 comments and a revised Decommissioning Plan ("Revised Plan"). GMCW contends that its initial proposal regarding the access roads is consistent with the decommissioning plans approved by the Board for other wind generation facilities, in Dockets 7156 and 7250.<sup>3</sup> Additionally, GMCW states that the conservation easement, negotiated with ANR and approved by the Board, requires that the access roads within the easement area be restored to the approximate condition of the roads prior to construction of the Project, and that GMCW had not agreed to additional restoration of the access roads beyond what is required by the conservation easement. Furthermore, GMCW asserts that prior decommissioning plans approved by the Board did not require tree planting.

On November 21, 2011, ANR filed via email comments regarding the sufficiency of the Revised Plan, followed by a hard copy filed on November 23, 2011. ANR maintains that GMCW's proposed decommissioning plan does not return the project site to its pre-construction condition as required by the Board. Additionally, ANR reiterates its position that all roads associated with the Project, within and outside the conservation easement area, must be restored to pre-construction conditions.

On November 22, 2011, GMCW filed a response to ANR's November 21 comments, claiming that ANR's comments were untimely and should not be considered by the Board. GMCW contends that ANR is attempting to impose additional decommissioning requirements based upon a decommissioning plan submitted in a separate proceeding. GMCW asserts that the

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2. Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC to construct a wind generation facility in Lowell, Vermont.

3. Petition of Vermont Wind, LLC to construct a wind generation facility in Sheffield, Vermont, and Petition of Deerfield Wind, LLC to construct a wind generation facility in Searsburg and Readsboro, respectively.

"retroactive application of these additional conditions post-CPG would be fundamentally unfair to petitioner, in violation of due process and in contravention of the Board's order in this docket."

No other comments were filed regarding the Plan or Revised Plan.

### **III. DISCUSSION AND CONCLUSION**

GMCW proposes to decommission the Project, at the end of the Project's useful life, as required under the Board's June 11, 2010 Order and CPG.<sup>4</sup> GMCW's November 4, 2011, Revised Plan filing includes modifications pursuant to the Board's October 27 memorandum and ANR's October 21 comment letter. The filing also includes a description of the Revised Plan, the decommissioning process, and the Fund.

#### **The Revised Plan and Decommissioning Process**

Our June 11 Order included findings that GMCW would develop a decommissioning plan "similar to those previously approved by the Board for commercial-scale wind generation projects,"<sup>5</sup> and that "[u]pon decommissioning, the Project site will be restored to pre-construction conditions to the extent practical."<sup>6</sup> Additionally, we found that the decommissioning fund "should be adequately funded to ensure that the Project site returns to its pre-construction condition and reestablishes a stable forest community after the generation facility ceases to be used for commercial production."<sup>7</sup>

The Revised Plan provided by GMCW is substantially similar to the decommissioning plans approved in Dockets 7156 (Petition of First Wind) and 7250 (Petition of Deerfield Wind).<sup>8</sup>

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4. Letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at Decommissioning Plan.

5. Docket 7508, Order of 6/11/10 at Finding 270.

6. Docket 7508, Order of 6/11/10 at Finding 273.

7. Docket 7508, Order of 6/11/10 at Finding 274.

8. GMCW's filing states that construction pads would remain in place. It is the Board's understanding that the concrete turbine pads would be removed and that the construction pads referred to in the decommissioning plan are the cleared areas, depicted on the design-detail drawings, located near each turbine that would be used as a staging area to assemble the turbine. Our approval of the Revised Plan is based on this understanding and accordingly, as

(continued...)

ANR recommends that additional measures be required, citing a decommissioning plan approved in a subsequent docket, stipulated to by the petitioners in that docket, as an ideal decommissioning plan that the Board should require.

ANR relies upon the finding that the decommissioning fund "should be adequately funded to ensure that the Project site returns to its pre-construction condition and reestablishes a stable forest community after the generation facility ceases to be used for commercial production." However, ANR's position does not acknowledge the Board's finding that the decommissioning plan in this proceeding would be similar to decommissioning plans previously approved by the Board.<sup>9</sup> Additionally, we provided the following direction as to the minimum requirements of the decommissioning plan:

(1) all turbines, including the blades, nacelles and towers, would be disassembled and transported off-site for reclamation and sale; (2) all of the transformers would also be transported off-site for reuse or reclamation; (3) the overhead power collection conductors and the power poles would be removed from the site; (4) all underground infrastructure at depths less than two feet below grade would be removed from the site; and (5) all underground infrastructure at depths greater than two feet below finished grade would be abandoned in place. Areas where subsurface components are removed would be filled, graded to match adjacent contours, and re-seeded, stabilized with an appropriate seed mix, and allowed to re-vegetate naturally.<sup>10</sup>

This guidance does not require the removal of any roads associated with the project nor the active reforestation of the site. The conservation easement agreed to by GMCW and ANR is meant to "protect and maintain state-significant natural communities"<sup>11</sup> at the site and does not require full restoration of the roads within the easement area. The finding that the decommissioning fund should be sufficient to reestablish "a stable forest community after the generation facility ceases to be used for commercial production" does not require, nor was meant to imply, that the reforestation must occur immediately.

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8. (...continued)

part of decommissioning, the concrete turbine pads must be removed to a depth of at least two feet.

9. The Order and CPG that we issued for the Project requires that "Construction, operation and maintenance of the Project shall be in accordance with the findings and requirements set forth in this Order." CPG at Condition 1.

10. Docket 7508, Order of 6/11/10 at Footnote 107.

11. Conservation easement at ¶ 1.

We conclude that GMCW's proposed actions to decommission the Project plan are similar to decommissioning plans previously approved by the Board and satisfy the requirement that the Project site be restored to pre-construction conditions to the extent practical.

GMCW's Revised Plan also includes a decommissioning trigger proposing that:

If actual production falls below 50% of the projected production during any consecutive two-year period, a decommissioning review will be initiated by the [Board]. In any case, GMCW will have the opportunity to demonstrate during this review that there are reasons for the decline in production such that the Project should not be removed.<sup>12</sup>

GMCW (or its successor) will be in the best position to know whether the Project's energy production is less than 50% of the projected energy production for the Project during any consecutive two-year period. Therefore, we conclude that, although the Board reserves the right to initiate a review, GMCW (or its successor) should be under an obligation to initiate a review before the Board regarding whether decommissioning is appropriate under such circumstances. Further, under such a review, GMCW will not merely "have the opportunity" to demonstrate that a Project should not be removed, but will have the burden of demonstrating why decommissioning should not be ordered. Accordingly, the Plan's decommissioning trigger is revised as follows:

In the event actual energy production from the Project is less than 50% of the projected energy production for the Project during any consecutive two-year period, GMCW (or its successor) shall so inform the Board, and a review before the Board shall be initiated to determine whether decommissioning is appropriate. During any such proceeding GMCW (or its successor) shall have the burden of demonstrating why decommissioning should not be ordered by the Board.

With the modifications discussed above, we conclude that the Revised Plan filed by GMCW on November 4, 2011, meets Condition 12 of the CPG.

### The Fund

GMCW proposes to establish the Fund with a stand-alone "irrevocable standby" Letter of Credit with an auto-extension provision, issued by an A-rated financial institution solely for the

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12. Letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board at Decommissioning Plan at 3.

benefit of the Board. GMCW states that the Fund will be independently managed and creditor and bankruptcy remote. GMCW also states that the Board will be entitled to draw on the Letter of Credit in the event that GMCW is unable or unwilling to commence decommissioning activities within a reasonable period of time, not to exceed ninety days, following the issuance of an order by the Board for the decommissioning of the Project.<sup>13</sup> In addition, GMCW submitted a sample Letter of Credit as well as its proposed drawing certificate with its November 4 filing, and stated that it will provide the Board with the final Letter of Credit prior to the commencement of construction of the Project.<sup>14</sup> In addition, GMCW represents that its Letter of Credit will be commensurate with the bimonthly construction expenditures such that upon commercial operation 100% of the estimated cost of decommissioning will be funded. GMCW proposes to adjust the estimated cost:

annually to account for the price level changes in the preceding 12-month period, no later than January 31 of each year by multiplying the Estimated Cost of Decommissioning by the percentage change in the "other Heavy Construction" index of the Producer Price Index and adding that result to the current Estimated Cost of Decommissioning to arrive at the revised Estimated Cost of Decommissioning.

We have several concerns regarding GMCW's proposals regarding the Fund. First, the sample drawing certificate refers to issuance of a "final order, no longer subject to appeal, in which the Beneficiary orders decommissioning" as a prerequisite to access to funding under the Letter of Credit. The Board previously rejected such language because it would have the effect of imposing an automatic stay on any Board order directing decommissioning, a stay that could last a significant period of time if such an order were appealed.<sup>15</sup> Accordingly, GMCW must revise the drawing certificate by removing the prerequisite for a "final order, no longer subject to appeal," and shall file the revised drawing certificate with the Board for Board review and approval.

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13. Although not expressly stated as such by GMCW, we conclude that the Board must be able to draw on the Letter of Credit if a successor of GMCW was "unable or unwilling to commence decommissioning."

14. Letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A.2. In addition, GMCW stated that it will name the Board as the "Beneficiary" and will replace the reference to the "Agreement" with the appropriate reference to the CPG approving the Project and subsequent order approving the Plan.

15. Docket 7628, Order of 7/27/11 at 15.

Second, GMCW's proposed mechanism for revising the estimated cost of decommissioning using the Producer Price Index would diverge from inflation mechanisms previously approved by the Board.<sup>16</sup> GMCW failed to provide the Board with any basis for using the Producer Price Index ("PPI") rather than the Consumer Price Index ("CPI"). Given the lack of support, the Board finds no reason to adjust the estimated costs using the PPI. Therefore, GMCW shall adjust the Fund annually to account for inflation based on the then-current CPI, as maintained by the Bureau of Labor Statistics, and file an annual Fund status report with the revised estimated cost of decommissioning and the new Fund total by January 1 of each year. In addition, GMCW shall only increase the value of the Fund for inflation, and shall not reduce the value of the Fund if the CPI has a negative value at the time the annual adjustment is calculated.

Third, we are concerned about the amount and scope of the decommissioning cost estimate GMCW filed with the Board. GMCW initially filed its estimated cost of decommissioning with its October 21 filing, dated January 25, 2011.<sup>17</sup> GMCW then re-filed an identical cost estimate with its November 4 filing.<sup>18</sup> The cost estimate states that decommissioning will cost approximately \$521,000 in 2011 dollars (including removal of the Project's structural elements, site restoration, and five years of non-native invasive species monitoring and control post-decommissioning).<sup>19</sup> The cost estimate includes the following within the scope of work:

Return the site to the same condition it was in prior to *decommissioning*. Roads and crane pads will be re-graded/repaired. Areas that had vegetation prior to *decommissioning* will be re-graded, loamed and seeded.<sup>20</sup>

Presenting a cost estimate for returning the site to the same condition it was in prior to *decommissioning* clearly does not meet the decommissioning requirements discussed above and

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16. See Docket 7628; Docket 7618; Docket 7611; Docket 7156.

17. Letter of October 4, 2011, from Kimberly Hayden, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A.

18. Letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A.1.

19. Letter of October 4, 2011, from Kimberly Hayden, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A; letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at Decommissioning Plan at 1 and exh. A.1.

20. Letter of November 4, 2011, from Kane H. Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A.1 (emphasis added).



outlined in the Board's June 11 Order. Instead, the cost estimate must be sufficient to meet the Revised Plan as approved in this Order. In addition, GMCW did not adjust the scope of work or the cost estimate after revising its October 21 Plan to include additional site restoration. Therefore, we cannot approve the cost estimate for decommissioning at this time and we will require that, prior to commencing construction, GMCW re-file an updated and corrected cost estimate for review and approval by the Board.

Therefore, we deny, without prejudice, GMCW's plan to establish a Fund based on the cost estimates submitted with its October and November filings and utilizing a drawing certificate such as the sample submitted with its November filing. In all other respects, we approve GMCW's Revised Plan, with the modifications required above.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that the Revised Decommissioning Plan filed by Georgia Mountain Community Wind, LLC ("GMCW") on November 4, 2011, is denied in part, without prejudice, and approved in part, with the following conditions:

1. As part of decommissioning, GMCW shall remove the concrete turbine pads to a depth of at least two feet.
2. In the event actual energy production from the Project is less than 50% of the projected energy production for the Project during any consecutive two-year period, GMCW (or its successor) shall so inform the Board, and a review before the Board shall be initiated to determine whether decommissioning is appropriate. During any such proceeding GMCW (or its successor) shall have the burden of demonstrating why decommissioning should not be ordered by the Board.
3. In the event that GMCW (or its successor) is unable or unwilling to commence decommissioning activities within a reasonable period of time, not to exceed ninety days, following the issuance of an order by the Board for the decommissioning of the Project, the Board will be entitled to draw on the Letter of Credit.

4. GMCW shall file an updated and corrected estimate for the estimated cost of decommissioning for Board review and approval prior to the commencement of construction.

5. GMCW shall file a revised drawing certificate for Board review and approval prior to the commencement of construction.

6. GMCW shall file an annual Fund status report with the revised estimated cost of decommissioning and the new Fund total by January 1 of each year utilizing the CPI, as discussed above.

DATED at Montpelier, Vermont, this 9<sup>th</sup> day of December, 2011.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: December 9, 2011

Attest: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*